

By: Ellis

S.B. No. 860

A BILL TO BE ENTITLED

AN ACT

relating to wine and beer retailer's permits.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.393(a), Alcoholic Beverage Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a person who submits an original application for a private club registration permit or a permit authorizing the retail sale of alcoholic beverages for on-premises consumption shall give written notice of the application to each residential address and established neighborhood association any point on the property line of which is less than ~~[located within]~~ 300 feet from ~~[of]~~ any point on the property line of the premises for which the permit is sought, as measured in a straight line.

SECTION 2. Section 11.43(c), Alcoholic Beverage Code, is amended to read as follows:

(c) A hearing shall be held on any renewal application of a mixed beverage permit, private club registration permit, wine and beer retailer's permit, or retail dealer's on-premise license if a sexually oriented business is to be operated on the premises to be covered by the permit or license and a petition is presented to the commission requesting a hearing which is signed by 50 percent of the residents who reside on property any point on the property line of which is less than ~~[within]~~ 300 feet from ~~[of]~~ any point on the

1 property line of the affected premises, as measured in a straight
2 line.

3 SECTION 3. Subchapter B, Chapter 11, Alcoholic Beverage
4 Code, is amended by adding Section 11.461 to read as follows:

5 Sec. 11.461. CERTAIN WINE AND BEER RETAILER'S PERMITS:
6 ADDITIONAL GROUNDS FOR REFUSAL TO RENEW. (a) This section applies
7 only to a wine and beer retailer's permit for premises located in a
8 municipality:

9 (1) with a population of 1.5 million or more; and

10 (2) that has not adopted a comprehensive zoning
11 ordinance under Subchapter A, Chapter 211, Local Government Code.

12 (b) The commission or administrator may refuse to issue a
13 renewal wine and beer retailer's permit for a premises located
14 within 300 feet of a church, school, or day-care center or
15 child-care facility, as that distance is determined under Sections
16 109.33 and 109.331, if the commission or administrator determines
17 after a hearing that the operation of the premises has an adverse
18 effect on the health, safety, or welfare of individuals attending
19 the church, school, or day-care center or child-care facility.

20 SECTION 4. Subchapter B, Chapter 11, Alcoholic Beverage
21 Code, is amended by adding Section 11.481 to read as follows:

22 Sec. 11.481. REFUSAL OF WINE AND BEER RETAILER'S PERMIT:
23 CERTAIN RELATIVES OF CERTAIN APPLICANTS. If the commission,
24 administrator, or county judge refuses to issue or renew or cancels
25 a wine and beer retailer's permit, an original wine and beer
26 retailer's permit for the same premises may not be issued to an
27 individual related to the former permit holder or applicant within

1 the fourth degree by consanguinity or affinity, as determined under
2 Chapter 573, Government Code.

3 SECTION 5. Subchapter C, Chapter 11, Alcoholic Beverage
4 Code, is amended by adding Section 11.614 to read as follows:

5 Sec. 11.614. CANCELLATION OF CERTAIN WINE AND BEER
6 RETAILER'S PERMITS. (a) In this section, "residential area" has
7 the meaning assigned by Section 244.001, Local Government Code.

8 (b) This section applies only to a wine and beer retailer's
9 permit for premises located in a residential area in a
10 municipality:

11 (1) with a population of 1.5 million or more; and

12 (2) that has not adopted a comprehensive zoning
13 ordinance under Subchapter A, Chapter 211, Local Government Code.

14 (c) The commission, the administrator, or the county judge,
15 as applicable, shall hold a hearing under this subchapter to
16 determine whether a wine and beer retailer's permit should be
17 canceled if the commission receives a petition that:

18 (1) alleges a ground for cancellation under Section
19 11.61;

20 (2) is:

21 (A) signed by 25 percent of the owners or tenants
22 of real property within 300 feet of any point on the property line
23 of the permitted premises; or

24 (B) submitted by the state senator or
25 representative who represents the district in which the premises
26 are located, the chief of police, mayor, or a member of the city
27 council of the municipality in which the premises are located, or

1 the sheriff of the county in which the premises are located; and

2 (3) is accompanied by the sworn statement of at least
3 one credible person supporting the grounds alleged in the petition.

4 SECTION 6. Section 25.02, Alcoholic Beverage Code, is
5 amended to read as follows:

6 Sec. 25.02. FEE. Except as provided in Section 25.03 [~~of~~
7 ~~this code~~], the [~~annual~~] state fee for a wine and beer retailer's
8 permit is:

9 (1) \$1,000 for an original permit; and

10 (2) \$175 annually for a renewal permit.

11 SECTION 7. Chapter 25, Alcoholic Beverage Code, is amended
12 by adding Section 25.055 to read as follows:

13 Sec. 25.055. PREMISES IN RESIDENTIAL AREA: ADDITIONAL
14 NOTICE REQUIREMENTS. (a) In addition to any other notice required
15 by this code, and notwithstanding Section 11.393(b), a person who
16 submits an application for an original or renewal wine and beer
17 retailer's permit for premises located in a residential area, as
18 that term is defined by Section 244.001, Local Government Code,
19 shall give notice of the application to:

20 (1) all tenants and owners of real property located
21 less than 300 feet from any point on the property line of the
22 premises, as measured in a straight line;

23 (2) the sheriff of the county in which the premises are
24 located;

25 (3) the chief of police, mayor, and members of the
26 governing body of the incorporated city in which the premises are
27 located; and

1 (4) the state senator and state representative
2 representing the district in which the premises are located.

3 (b) Notice required by Subsection (a) must be:

4 (1) delivered by mail at the applicant's expense;

5 (2) provided in English and a language other than
6 English if it is likely that a substantial number of residents in
7 the area speak a language other than English as their familiar
8 language; and

9 (3) provided on or before:

10 (A) the fifth day after the date on which the
11 applicant files the application, if the application is an original
12 application; or

13 (B) the 30th day before the expiration date of a
14 permit for which the applicant files a renewal application.

15 (c) The notice must be provided on a form prescribed by the
16 commission and must contain:

17 (1) the type of permit and type of business for which
18 the applicant has applied;

19 (2) the exact location of the place of business for
20 which the permit is sought;

21 (3) the name of each owner of the business or, if the
22 business is operated under an assumed name, the trade name and the
23 name of each owner;

24 (4) if the applicant is a corporation, the name and
25 title of each officer of the corporation; and

26 (5) a description of the procedure for protesting the
27 application.

1 (d) In addition to any other notice required by this code,
2 the commission, administrator, or county judge, as appropriate,
3 shall give notice of all hearings concerning an original or renewal
4 application for a wine and beer retailer's permit to each person
5 entitled to notice under Subsection (a). Notwithstanding Section
6 11.40, if hearings concerning the application are held by the
7 commission or administrator, the commission or administrator shall
8 also give notice under this subsection to the county judge of the
9 county in which the premises for which the permit is sought are
10 located.

11 SECTION 8. Chapter 25, Alcoholic Beverage Code, is amended
12 by adding Section 25.07 to read as follows:

13 Sec. 25.07. LIMITATION ON ISSUANCE OF PERMITS IN CERTAIN
14 MUNICIPALITIES. (a) In this section, "residential area" has the
15 meaning assigned by Section 244.001, Local Government Code.

16 (b) This section applies only to a municipality:

17 (1) with a population of 1.5 million or more; and

18 (2) that has not adopted a comprehensive zoning
19 ordinance under Subchapter A, Chapter 211, Local Government Code.

20 (c) The governing body of the municipality may adopt
21 regulations limiting the number of wine and beer retailers that may
22 operate in a zip code area located wholly or partly within the
23 municipality if the zip code area consists primarily of real
24 property in residential areas. A regulation adopted under this
25 subsection for a zip code area only partly located in the
26 municipality applies only to the area located in the municipality.

27 (d) A regulation adopted under this section may prescribe a

1 limit for a zip code area that is fewer than the number of wine and
2 beer retailers operating in the zip code area at the time the
3 regulation is adopted, but a regulation adopted under this section
4 does not affect the authority of a person who holds a wine and beer
5 retailer's permit at the time the regulation is adopted to continue
6 to operate under that permit or to renew that permit.

7 (e) The county judge shall deny an application for an
8 original application for a wine and beer retailer's permit if, at
9 the time the application is filed, the number of wine and beer
10 retailers operating in the zip code area for the premises for which
11 the permit is sought equals or exceeds the number of wine and beer
12 retailers allowed in that zip code area by a regulation adopted
13 under this section.

14 SECTION 9. Chapter 25, Alcoholic Beverage Code, is amended
15 by adding Section 25.14 to read as follows:

16 Sec. 25.14. HOURS OF OPERATION OF CERTAIN PERMIT HOLDERS.

17 (a) In this section, "residential area" has the meaning prescribed
18 by Section 244.001, Local Government Code.

19 (b) This section applies only to the holder of a beer and
20 wine retailer's permit for premises located in a residential area
21 in a municipality:

22 (1) with a population of 1.5 million or more; and

23 (2) that has not adopted zoning regulations or a
24 comprehensive zoning ordinance under Subchapter A, Chapter 211,
25 Local Government Code.

26 (c) The holder of a beer and wine retailer's permit may not
27 allow any customer on the premises after 2 a.m.

1 SECTION 10. Section 61.382(a), Alcoholic Beverage Code, is
2 amended to read as follows:

3 (a) Except as provided by Subsection (b), a person who
4 submits an original application for a license authorizing the
5 retail sale of beer for on-premises consumption shall give written
6 notice of the application to each residential address and
7 established neighborhood association any point on the property line
8 of which is less than [~~located within~~] 300 feet from [~~of~~] any point
9 on the property line of the premises for which the license is
10 sought, as measured in a straight line.

11 SECTION 11. Section 109.33, Alcoholic Beverage Code, is
12 amended by amending Subsection (b) and adding Subsection (b-1) to
13 read as follows:

14 (b) Except as provided by Subsection (b-1), the [~~The~~]
15 measurement of the distance between the place of business where
16 alcoholic beverages are sold and the church or public hospital
17 shall be along the property lines of the street fronts and from
18 front door to front door, and in direct line across intersections.
19 Except as provided by Subsection (b-1), the [~~The~~] measurement of
20 the distance between the place of business where alcoholic
21 beverages are sold and the public or private school shall be:

22 (1) in a direct line from the property line of the
23 public or private school to the property line of the place of
24 business, and in a direct line across intersections; or

25 (2) if the permit or license holder is located on or
26 above the fifth story of a multistory building, in a direct line
27 from the property line of the public or private school to the

1 property line of the place of business, in a direct line across
2 intersections, and vertically up the building at the property line
3 to the base of the floor on which the permit or license holder is
4 located.

5 (b-1) This subsection applies only to regulations enacted
6 by a municipality with a population of 1.5 million or more that has
7 not adopted a comprehensive zoning ordinance under Subchapter A,
8 Chapter 211, Local Government Code. Except as provided by this
9 subsection, for the purposes of this section, the distance between
10 a particular property and a premises for which a wine and beer
11 retailer's permit is held or sought is the distance between the
12 point on the property line of the particular property and the point
13 on the property line of the permitted or potentially permitted
14 premises that are nearest each other, as measured in a straight
15 line. For the purposes of a regulation enacted under Subsection
16 (a), the distance between a particular property and a premises for
17 which a wine and beer retailer's permit is originally granted
18 before September 1, 2005, is determined by the law in effect at the
19 time the original permit was granted.

20 SECTION 12. Subchapter C, Chapter 109, Alcoholic Beverage
21 Code, is amended by adding Section 109.332 to read as follows:

22 Sec. 109.332. CERTAIN BEER AND WINE RETAILERS: SALES NEAR
23 CERTAIN YOUTH-ORIENTED FACILITIES. (a) This section applies only
24 to the holder of a beer and wine retailer's permit for premises
25 located in a municipality:

- 26 (1) with a population of 1.5 million or more; and
27 (2) that has not adopted zoning regulations or a

1 comprehensive zoning ordinance under Subchapter A, Chapter 211,
2 Local Government Code.

3 (b) Except as provided by this subsection, the provisions of
4 Section 109.33 relating to the location of a permitted premises
5 with respect to a public school also apply to the location of a beer
6 and wine retailer's premises with respect to a playground, video
7 arcade facility, or public or private youth center, as those terms
8 are defined by Section 481.134, Health and Safety Code, or a public
9 swimming pool. Sections 109.33(a)(2) and (c) do not apply to the
10 location of a beer and wine retailer's premises with respect to the
11 other premises listed in this subsection.

12 SECTION 13. (a) Sections 11.461 and 109.332, Alcoholic
13 Beverage Code, as added by this Act, apply only to an application
14 for an original or renewal wine and beer retailer's permit that is
15 filed or pending on or after the effective date of this Act. An
16 application for an original or renewal wine and beer retailer's
17 permit that is filed and approved before the effective date of this
18 Act is governed by the law in effect immediately before that date,
19 and that law is continued in effect for that purpose.

20 (b) Except as provided by Subsection (c) of this section,
21 Sections 11.393, 25.02, 61.382, and 109.33, Alcoholic Beverage
22 Code, as amended by this Act, and Sections 11.481 and 25.055,
23 Alcoholic Beverage Code, as added by this Act, apply only to an
24 application for an original or renewal wine and beer retailer's
25 permit that is filed on or after the effective date of this Act. An
26 application filed before the effective date of this Act is governed
27 by the law in effect immediately before that date, and that law is

1 continued in effect for that purpose.

2 (c) Section 25.055(d), Alcoholic Beverage Code, as added by
3 this Act, applies only to a hearing concerning an application for a
4 wine and beer retailer's permit that occurs on or after November 1,
5 2005. A hearing held before November 1, 2005, is governed by the
6 law in effect immediately before the effective date of this Act, and
7 that law is continued in effect for that purpose.

8 SECTION 14. This Act takes effect immediately if it
9 receives a vote of two-thirds of all the members elected to each
10 house, as provided by Section 39, Article III, Texas Constitution.
11 If this Act does not receive the vote necessary for immediate
12 effect, this Act takes effect September 1, 2005.